

REMARKS

This responds to the Office Action mailed on July 10, 2008.

Claims 1, 6, 16, 17, 19, 20 and 21 are amended, claim 15 is canceled. Claims 1-14, and 16-21 are now pending in this application, with claims 1, 6, 17, and 19-21 being the independent claims.

35 USC § 103 Rejection of the Claims

Claims 1-21 were rejected under 35 USC § 103(a) as being unpatentable over Kanterakis (U.S. Patent No. 7,099,346) in view of Kudo (U.S. Patent No. 5,179,557) and Guttman et al. (U.S. Patent No. 7,031,259). Applicant respectfully traverses the rejection.

The Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C. § 103(a) the cited references, when combined, must teach or suggest every element of the claim. See MPEP § 2143.03, for example. Applicant respectfully submits that the Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in amended claims 1, 6, 17, and 19-21.

For example, as amended, claim 1 recites a method of determining when to initiate a channel access comprising: *determining if at least one of a plurality of transmit queues is eligible based on comparing the queue and status of the queue to channel access rules*, wherein each transmit queue corresponds to a receiver address of a received packet; and

initiating a channel access for at least one eligible transmit queue, if at least one of the following has occurred: a timer associated with said eligible transmit queue has expired; and a count associated with said eligible transmit queue has exceeded a threshold.

The Action states that Kanterakis fails to teach multiple queues and wherein each transmit queue corresponds to a receiver address of a received packet. In addition to not teaching these elements, Kanterakis, alone or in combination, also fails to teach determining if a queue is eligible based on comparing the queue to channel access rules.

The Action on pages 6 and 10 incorrectly aligns the timer and buffer count considerations of Kanterakis with the channel access rules of the claimed invention. Kanterakis makes no determination of eligibility for channel access beyond the timer and buffer count. In contrast, in the claims, eligibility of the queue for channel access is a separate consideration from whether a timer has expired or a count has exceeded a threshold. FIG. 2 of the specification illustrates an example. FIG. 2 shows four queues for a system where channel access rules include a consideration of a queue priority. Queues 205B and 205D are low-priority queues and are not therefore eligible for channel access, even though each non-eligible queue may have a timer or a count that meets the remaining channel access criteria of an expired timer or an exceeded count threshold.

Further, because Kanterakis teaches only one buffer, there would be no need to determine eligibility of that buffer beyond the considerations already disclosed in Kanterakis.

The Action relies on Kudo, in FIG. 8 and at col. 2, lines 31-40 to teach wherein queue eligibility is defined based on queues assigned to packets of a specified priority (claim 16). In fact, Kudo teaches assigning incoming packets to different buffers according to priority, but does not teach eligibility of a queue based on priority, or any other channel access rules. Instead, Kudo teaches sequentially reading out heading packets from any of the data buffer memories and sequentially transmitting the read-out packets. Kudo, col. 3, lines 28-30. Therefore, Kudo, alone or in combination with Kanterakis, fails to teach all of the elements of claim 1.

Further, Guttman fails to teach or fairly suggest these elements of claim 1. Therefore, the references, alone or in combination, fail to teach or suggest every element of claim 1, and the Action has failed to set forth a prima facie case of obviousness. Applicant respectfully requests that the rejection be withdrawn and the claim allowed.

Independent claims 6, 17, and 19-21 recite similar elements as those discussed above regarding claim 1, and are allowable for at least the same reasons. Further, claims 2-5, 7-14, 16, and 18 are dependent at least for being dependent from allowable claims.

Applicant does not otherwise concede, however, the correctness of the Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (724-933-9338) to facilitate prosecution of this application.

Respectfully submitted,

KACVINSKY LLC

Customer Number: 57035

724-933-5529

Date October 10, 2008

By /John F. Kacvinsky/

John F. Kacvinsky

Reg. No. 40,040